

If no tangible personal property is transferred incident to the sales of services, then no Service Occupation Tax or Use Tax would be incurred on the sales of those services. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

June 23, 2008

Dear Xxxxx:

This letter is in response to your letter dated July 9, 2007, in which you request information. We apologize for the delay in responding to your additional inquiry. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

On behalf of our client, we are requesting a written determination regarding the applicability of Illinois sales tax to call center services to be provided by our client on behalf of prospective customers. Following is a brief set of facts that describe the services proposed to be provided by our client on behalf of its prospective customers.

BACKGROUND — NATURE OF SERVICE

Our client (ABC) is a leading provider of outsourced contact center services or call centers for companies serving the Hispanic market. Third party companies (Company) located across the United States engage our client to serve as a "remote office" for bilingual contact center operations, providing customer care, technical support, customer acquisition and e-services for Spanish-language customers (Third Party Customers).

ABC is a STATE1 company with an administrative office located in CITY/STATE and three telephone call centers located in Mexico. The CITY/STATE office provides marketing and administrative functions for the STATE1 Company. The call centers located in Mexico provide live operators who answer questions of Third Party Customers located across the United States. ABC has telephone and computer equipment both in CITY/STATE and in Mexico. The equipment in CITY/STATE encrypts all incoming calls and re-routes them to the Mexico call centers. All telephone calls are

either initiated by a Third Party Customer or originate from Mexico in response to an email or a phone call from a Third Party Customer. Our client invoices the respective Company for the cumulative number of phone hours used in providing telephone services on their behalf.

Following are examples of service type contracts that ABC is considering, along with questions concerning the taxability of the particular service in question.

TAXABILITY OF SPECIFIC SERVICES

Service A – Customer Service for Credit Card Company

ABC is considering entering into a contract with a company that issues credit cards and provides electronic payment services to its clients. Pursuant to the proposed contract, ABC would provide telephone customer service to the company's Spanish-language customers.

Question 1 – If ABC were to enter into a Service A type contract with a credit card company doing business in Illinois, would this transaction be subject to Illinois sales tax? Would the location of the caller impact the taxability determination? That is, would it make a difference if the caller were located in the state of Illinois or outside the state of Illinois?

If you have any questions, please do not hesitate to contact me. We appreciate your consideration of this matter.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. For your general information see of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

Based upon the description of the services your client provides, it does not appear that any tangible personal property is transferred incident to those services. If no tangible personal property is transferred incident to a sale of service, then no Service Occupation Tax or Use Tax would be incurred on the sale of that service. A serviceman that makes sales of service that do not involve the transfer of tangible personal property incident to those sales would not be required to register as a

retailer or serviceman for sales tax purposes. We cannot provide you with a binding determination without review the contractual arrangements between your client and its customers in the context of a Private Letter Ruling request.

Please note that the State of Illinois considers prewritten computer software to be tangible personal property personal property and would be taxable even if is delivered electronically. See 86 Ill. Adm. Code 130.1935. Please also be aware that Illinois has telecommunications taxes that may be applicable depending upon if your client is selling telecommunications. See for example the Illinois Telecommunications Excise Tax Act (35 ILCS 630/1 et seq.).

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
Senior Counsel, Sales & Excise Taxes

TDC:msk